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*[Proposed] Counsel for Martifer Aurora Solar, LLC
and Martifer Solar USA, Inc.*

Electronically Filed February 10, 2014

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

MARTIFER AURORA SOLAR, LLC, a
Nevada limited liability company,

- ☐ Affects Martifer Aurora Solar, LLC
☐ Affects Martifer Solar USA, Inc.
☒ Affects all Debtors

Case Nos. BK-S-14-10355-abl and
BK-S-14-10357-abl

Jointly Administered under
Case No. BK-S-14-10355-abl

Chapter 11

**APPLICATION FOR ORDER
AUTHORIZING RETENTION AND
EMPLOYMENT OF FOX ROTHSCHILD
LLP AS DEBTORS' COUNSEL, *NUNC
PRO TUNC* TO THE PETITION DATE**

Hearing Date: March 10, 2014
Hearing Time: 9:30 a.m.

Martifer Solar USA, Inc. ("Martifer USA") and Martifer Aurora Solar, LLC ("Aurora", and collectively with Martifer USA, the "Debtors"), debtors and debtors in possession in the above-referenced chapter 11 bankruptcy cases (the "Chapter 11 Cases"), respectfully submit this application (the "Application") for an order pursuant to sections 327(a), 328, 1107 and 1108 of title 11 of the United States Code, §§ 101 *et. seq.* (the "Bankruptcy Code"), Rules 2014(a), 2016, 5002 and 9034 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2014 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Nevada

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(the “Local Rules”), authorizing Debtors to retain and employ the law firm of Fox Rothschild LLP, a limited liability partnership (“Fox Rothschild” or the “Firm”) as counsel for Debtors, effective as of January 21, 2014 (the “Petition Date”).

In support of this Application, Debtors rely on the the Declaration of Klaus Bernhart in support of Employment of Debtors’ Professionals (the “Bernhart Declaration”) and the Verified Statement of Brett A. Axelrod (the “Axelrod Verified Statement”). In addition, Debtors respectfully represent and show as follows:

I.

INTRODUCTION

1. On January 21, 2014, Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court.

2. Debtors have continued and are operating and managing their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108

3. No request has been made for the appointment of a trustee or examiner, and no statutory committee has been appointed.

4. Pursuant to an Order [Dkt #72] of the Court entered January 29, 2014, the Chapter 11 Cases were administratively consolidated under the bankruptcy case of Martifer Aurora Solar, LLC (“Aurora”), case no. BK-14-10355-abl.

5. The factual background relating to the Debtor’s commencement of the Chapter 11 Case is set forth in detail in the Omnibus Declarations of Klaus Bernhart in Support of First Day Motions [Aurora Dkt ##15, 40] and the Omnibus Declarations of Klaus Bernhart in Support of First Day Motions [Martifer USA Dkt ##15, 40] (together, the “Omnibus Declarations”), which are incorporated herein by this reference.

II.

JURISDICTION AND VENUE

6. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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III.

RELIEF REQUESTED

7. By this Application, Debtors seek an order pursuant to Bankruptcy Code sections 327(a), 328, 1107 and 1108, Bankruptcy Rules 2014(a), 2016, 5002 and 9034 and Local Rule 2014 authorizing the retention and employment of Fox Rothschild *nunc pro tunc* to the Petition Date, as counsel for the Debtors in connection with the commencement and prosecution of these Chapter 11 Cases, as described below, in accordance with Fox Rothschild's normal hourly rates and reimbursement policies.

8. Debtors are seeking to retain Fox Rothschild *nunc pro tunc* to the Petition Date.¹ Such relief is warranted by the extraordinary circumstances presented by this case. Fox Rothschild's work since the commencement of these Chapter 11 Cases has been performed on an emergency basis. The complexity, intense activity, and speed that have characterized these cases has necessitated that Fox Rothschild focus immediate attention on time-sensitive matters and promptly devote substantial resources to the representation of the Debtors pending submission and approval of this Application. Fox Rothschild has benefitted the estates by its diligence in prosecuting these Chapter 11 Cases and, among other things, obtaining the interim use of cash collateral. Finally, this Application is set for the first omnibus hearing date set by the Court under the Case Management Order [Dkt #91].

IV.

RETENTION OF FOX ROTHSCHILD

9. Debtors selected Fox Rothschild as their counsel because of Fox Rothschild's extensive experience and knowledge in the field of debtors' and creditors' rights and business reorganizations under chapter 11 of the Bankruptcy Code and familiarity with the facts and circumstances surrounding these Chapter 11 Cases given the Firm's prepetition representation of Debtors as described in numbered paragraphs 16 and 25 below. (Bernhart Declaration, ¶32).

¹ Bankruptcy Courts in the Ninth Circuit possess the equitable power to approve professional employment *nunc pro tunc*. In re Atkins, 69 F.3d 970, 973-74 (9th Cir. 1995) (citing Halperin v. Occidental Fin. Group, Inc. (In re Occidental Fin. Group, Inc.), 40 F.3d 1059, 1062 (9th Cir. 1994); Okamoto v. THC Fin. Corp. (In re THC Fin. Corp.), 837 F.2d 389, 392 (9th Cir. 1988)).

10. Debtors seek Court approval to retain Fox Rothschild at the expense of Debtors' estates to provide the legal services described herein that will be required to represent Debtors in these Chapter 11 Cases. (Bernhart Declaration, ¶33).

11. The terms of Fox Rothschild's retention is set forth in the Engagement Agreements entered into on January 2, 2014. Copies of the retention agreements are attached to the Axelrod Verified Statement, filed contemporaneously herewith and in support hereof, as **Exhibits 1 and 2** thereto and are incorporated herein for all purposes by this reference.

12. Accordingly, Debtors believe that Fox Rothschild is both well qualified and able to represent their interests in these Chapter 11 Cases in an efficient and timely manner and that such representation is in the best interests of Debtors, their estates, and constituents. (Bernhart Declaration, ¶34).

13. Debtors anticipate filing applications to retain various other estate professionals as special counsel. (Bernhart Declaration, ¶35). Fox Rothschild intends to monitor and coordinate carefully the efforts of all estate professionals, and delineate clearly their respective duties so as to prevent duplication of effort wherever possible. (Axelrod Verified Statement, ¶8). Rather than resulting in extra expense to Debtors' estates, it is anticipated that the efficient coordination of efforts of Debtors' attorneys and other professionals will greatly add to the progress and efficient administration of these Chapter 11 Cases. (Bernhart Declaration, ¶35).

V.

SCOPE OF EMPLOYMENT

14. In these Chapter 11 Cases, Debtors anticipate that Fox Rothschild will render general legal services as needed, including as to bankruptcy, financial restructuring, corporate, labor and employment, tax and litigation matters. The professional services that Fox Rothschild will render to Debtors may include, but shall not be limited to, the following:

- a. Advising Debtors of their rights and obligations and performance of their duties during administration of these Chapter 11 Cases;
- b. Attending meetings and negotiations with other parties in interest on Debtors' behalf in these Chapter 11 Cases;
- c. Taking all necessary action to protect and preserve Debtors' estates including: the prosecution of actions, the defense of any actions taken

1 against Debtors, negotiations concerning all litigation in which
2 Debtors are involved, and objecting to claims filed against the estates
3 which are believed to be inaccurate;

- 4 d. Negotiating and preparing a plan of reorganization, disclosure
5 statement and all papers and pleadings related thereto and in support
6 thereof and attending court hearings related thereto;
- 7 e. Representing Debtors in all proceedings before this Court or other
8 courts of jurisdiction in connection with these Chapter 11 Cases;
9 including, preparing and/or reviewing all motions, answers and orders
10 necessary to protect Debtors' interests;
- 11 f. Assisting Debtors in developing legal positions and strategies with
12 respect to all facets of these proceedings;
- 13 g. Preparing on Debtors' behalf necessary applications, motions,
14 answers, orders and other documents; and
- 15 h. Performing all other legal services for Debtors in connection with the
16 Chapter 11 Cases and other general corporate and litigation matters, as
17 may be necessary.

18 (See Axelrod Verified Statement, ¶7).

19 15. The Debtors may, from time to time, request that Fox Rothschild undertake specific
20 matters beyond the scope of the responsibilities set forth above. Should Fox Rothschild agree, in its
21 sole discretion, to undertake any such specific matters, the Debtors seek authority herein to employ
22 Fox Rothschild for such matters, in addition to those set forth above, without further order of this
23 Court. (Bernhart Declaration, ¶36).

24 16. The Debtors require knowledgeable counsel to render these essential professional
25 services. As described below, Fox Rothschild has substantial expertise in each of these areas. As a
26 result, Fox Rothschild is well-qualified to perform these services and represent Debtors' interests in
27 these Chapter 11 Cases. (Bernhart Declaration, ¶37). Subject to this Court's approval of this
28 Application, Fox Rothschild is willing to serve as Debtors' counsel and to perform the services
described above. (Axelrod Verified Statement, ¶8).

29 VI.

30 QUALIFICATIONS

31 17. Prior to the Petition Date, Debtors retained Fox Rothschild to advise them on
32 corporate, litigation and restructuring matters. Among other things, Fox Rothschild assisted
33 Debtors in pursuing its legal rights and remedies to recover certain receivables and was recently

1 awarded \$1.7 million after binding arbitration to recover a receivable of equal amount, advised
 2 Debtors in connection with various labor and employment issues, and engaged in discussions and
 3 negotiations with key stakeholder positions as part of restructuring efforts. Therefore, Fox
 4 Rothschild is intimately familiar with Debtors, their business operations and their financial
 5 condition. As such, Fox Rothschild is uniquely qualified to represent Debtors' interests with respect
 6 to Debtors' businesses and financial affairs and the potential legal issues that may arise in these
 7 Chapter 11 Cases. (Bernhart Declaration, ¶38).

8 18. Fox Rothschild is well suited for the type of representation required by Debtors. Fox
 9 Rothschild has a national practice and has experience in all aspects of the law that may arise in these
 10 Chapter 11 Cases including, among others, bankruptcy, financial restructuring, corporate, labor and
 11 employment, tax and litigation matters. (Bernhart Declaration, ¶39).

12 19. A summary of the qualifications and experience of those attorneys who are expected
 13 to render services to Debtors are attached to the Axelrod Verified Statement as **Exhibit 3**. Fox
 14 Rothschild is well qualified to represent Debtors. (Bernhart Declaration, ¶40).

15 20. Accordingly, Debtors believe that the appointment of Fox Rothschild as Debtor's
 16 counsel is in the best interest of Debtors and their estates. (Bernhart Declaration, ¶41)

17 VII.

18 DISINTERESTEDNESS

19 21. To the best of Debtors' knowledge, information and belief, other than as may be set
 20 forth herein or in the Axelrod Verified Statement and exhibits attached thereto, Fox Rothschild does
 21 not hold or represent any interest adverse to Debtors or Debtors' estates, and Fox Rothschild is a
 22 "disinterested person," as that term is defined in Bankruptcy Code section 101(14), as modified by
 23 Bankruptcy Code section 1107(b), and used in Bankruptcy Code section 327(a), in that:

24 a. Fox Rothschild, its partners, of counsel and associates:

- 25 i. are not creditors or insiders of Debtors (see paragraphs 25
 26 and 27 below);
- 27 ii. are not and were not, within two years before the date of
 28 this application, a director, officer, or employee of Debtors,
 as specified in subparagraph (c) of 11 U.S.C. §101(14); and

1 iii. do not hold an interest materially adverse to the interest of
2 the estate or of any class of creditors or equity holders
3 except as stated herein or in the Axelrod Verified
4 Statement.

5 b. Fox Rothschild does not represent or otherwise have other material
6 connections with any persons or entities other than as disclosed in
7 Exhibit 4 attached to the Axelrod Verified Statement, with the most
8 relevant material connections described in the subparagraphs
9 immediately below. Fox Rothschild will supplement these disclosures
10 in the event further material connections are discovered regarding
11 persons or entities that later become identified as parties in interest in
12 these Chapter 11 Cases.

13 i. Debtors' general counsel, Avi E. Muhtar, Esq., is a former
14 associate of Fox Rothschild;

15 ii. Fox Rothschild currently represents Wellpoint, Inc., an
16 affiliate of Anthem Blue Cross, which is Debtors' health
17 insurance provider. Debtors are seeking to maintain
18 employee benefits therefore Fox Rothschild maintains no
19 conflict exists.

20 iii. Fox Rothschild currently represents Enterprise Fleet
21 Management, an unsecured creditor, in matters unrelated to
22 Debtors or these Chapter 11 Cases. Fox Rothschild has not
23 represented, nor will it represent Enterprise Fleet
24 Management in any matter involving Debtors. Therefore,
25 Fox Rothschild maintains that no conflict exists.

26 iv. Fox Rothschild currently represents Johns Manville, an
27 unsecured creditor, in matters unrelated to Debtors or these
28 Chapter 11 Cases. Fox Rothschild has not represented, nor
29 will it represent Johns Manville in any matter involving
30 Debtors. Therefore, Fox Rothschild maintains that no
31 conflict exists.

32 v. Fox Rothschild currently represents Waste Management, an
33 affiliate of creditor Waste Management of Colorado, in
34 matters unrelated to Debtors or these Chapter 11 Cases.
35 Fox Rothschild has not represented, nor will it represent
36 Waste Management in any matter involving Debtors.
37 Therefore, Fox Rothschild maintains that no conflict exists.

38 vi. Fox Rothschild currently represents Panasonic Corporation
39 of North America, an affiliate of Panasonic Eco Solutions,
40 in matters unrelated to Debtors or these Chapter 11 Cases.
41 Panasonic Eco Solutions is a party to an executory contract
42 with Martifer USA. Fox Rothschild has not represented,
43 nor will it represent Panasonic Corporation of North
44 America in any matter involving Debtors. Therefore, Fox
45 Rothschild maintains that no conflict exists.

vii. Certain parties to non-disclosure agreements or confidentiality agreements with Debtors are Fox Rothschild clients in unrelated matters. Currently, Fox Rothschild does not believe that adverse positions will be taken by Debtors as to these parties. However, in the event that any adversity arises, Fox Rothschild will address such issue promptly.

c. Fox Rothschild does not have any connection with the judge of this Court, the United States Trustee for Region 17 or any person employed in the Office of the United States Trustee for the District of Nevada.

(Axelrod Verified Statement, ¶¶18, 19).

22. Debtors have been advised that Fox Rothschild has not previously represented Debtors or their owners, officers or directors other than as described herein and in the Axelrod Verified Statement. (See Axelrod Verified Statement, ¶20).

23. Debtors have been advised that Fox Rothschild has conducted a thorough search using its computerized conflicts check system, based on the information received to date from Debtors, and that Fox Rothschild attorneys have made diligent efforts to search the Firm's records and assemble pertinent information for purposes of the Axelrod Verified Statement with respect to Fox Rothschild's connection with Debtors' creditors, parties in interest and their respective attorneys and accountants. As Debtors are still preparing their schedules, it is possible Debtors may supplement this information and Fox Rothschild will then run an updated conflict search and file a supplement to the Axelrod Verified Statement. (Axelrod Verified Statement, ¶21).

24. Debtors have been advised that Fox Rothschild has, from time to time, represented parties adverse to certain creditors in these Chapter 11 Cases on unrelated matters. (Axelrod Verified Statement, ¶22).

25. Debtors have been advised that, from time to time, because of the nature of Fox Rothschild's practice, that Fox Rothschild may be engaged by one or more of Debtors' creditors in matters entirely unrelated to Debtors. Fox Rothschild represents clients in litigation, transactions, insolvency and other matters throughout the United States and that any such matter will not relate directly or indirectly to the representation of Debtors in these Chapter 11 Cases. (Axelrod Verified Statement, ¶23).

VIII.
COMPENSATION

26. Since March 2012, Fox Rothschild provided Debtors with a variety of legal services. Significant corporate, labor and employment, litigation, arbitration and secondment services were provided (collectively, the “General Services”), as well as significant services surrounding and relating to Debtors’ restructuring efforts and preparation for the chapter 11 filings (collectively, “Restructuring Services”). Fox Rothschild was paid for these services in the ordinary course of business. According to Fox Rothschild’s books and records, since March 2012 and prior to the Petition Date, Fox Rothschild received \$1,019,274.82 from Debtors or its parent, Martifer Solar, Inc. (“US Parent”), on behalf of Debtors. Approximately \$177,473.47 of that amount was in connection with the Restructuring Services. In the 90 days prior to the Petition Date, Fox Rothschild received \$200,000 from the US Parent, on behalf of Debtors, in connection with the General Services. Over the course of its employment prior to the Petition Date, Fox Rothschild wrote off \$101,862.50 in fees and costs in the exercise of its billing discretion. (See Bernhart Declaration, ¶42; Axelrod Verified Statement ¶24).

27. On January 2, 2014, the US Parent provided Fox Rothschild with an advance payment of \$350,000 to establish a retainer to pay for legal services rendered or to be rendered in connection with the Restructuring Services. Additionally, Debtors provided Fox Rothschild with the filing fees of \$1,213.00 each to file these Chapter 11 Cases. (Bernhart Declaration, ¶43; Axelrod Verified Statement, ¶25.) \$157,442.29 of the retainer was applied to Restructuring Services. Fox Rothschild is currently holding \$192,557.71 as prepetition retainer for these Chapter 11 Cases. The balance is held by Fox Rothschild according to its internal standard procedures in the same manner Fox Rothschild holds retainers for each of its other clients. Fox Rothschild intends to hold the retainer during the Chapter 11 Cases and apply the retainer against fees and expenses as may be allowed by the Court after submission of Fox Rothschild’s fee applications or compliance with any interim compensation procedure approved by the Court, with any balance to be returned to Debtors subsequent to the Court’s consideration of and ruling on Fox Rothschild’s final fee application in these proceedings. (Axelrod Verified Statement, ¶).

28. All fees and expenses for services rendered prior to the Petition Date were paid prior to the Petition Date or written off. Fox Rothschild has no claims against Debtors for any unpaid fees and expenses incurred prior to the Petition Date. (Axelrod Verified Statement, ¶26).

29. Fox Rothschild has agreed to accept as compensation for its services such sums as may be allowed by this Court and in accordance with applicable law on account of Fox Rothschild's fees and expenses. (Axelrod Verified Statement, ¶27). Debtors have agreed to pay Fox Rothschild's professional fees on an hourly basis, plus reimbursement of actual, necessary expenses and other charges incurred by the Firm. (Bernhart Declaration, ¶44).

30. As is the case with respect to rates charged in non-bankruptcy matters, Fox Rothschild's rates are subject to periodic adjustment to reflect economic and other conditions. Fox Rothschild's current hourly rates applicable to the principal attorneys and paraprofessionals proposed to represent Debtors are:

Professional	Hourly Rate
Brett A. Axelrod – Partner	\$675
Dawn Cica – Partner	\$550
Neal Cohen – Partner	\$520
Emily J. Yukich – Partner	\$510
Matthew J. Rita – Partner	\$500
Nancy Yaffe – Partner	\$475
Micaela Rustia Moore – Partner	\$460
Charles D. Axelrod – Counsel	\$845
Audrey Noll – Counsel	\$500
John H. Gutke – Associate	\$330
Namal Tantula – Associate	\$315
Rachel Silverstein - Associate	\$295
Tara Popova - Associate	\$280
Jacqueline Lechholz-Zey – Associate	\$270
Patricia M. Chlum – Paralegal	\$285
Wyn Saunders – Paralegal	\$275
Debra K. Eurich – Paralegal	\$225

31. Other attorneys and paraprofessionals will render services to Debtors, as needed. Generally, Fox Rothschild's hourly rates are in the following ranges:

Professional	Hourly Rate
Partners	\$210 to \$800
Counsel	\$210 to \$845
Associates	\$210 to \$650
Legal Assistants/Paralegals	\$110 to \$335

32. As these Chapter 11 Cases proceed, additional Fox Rothschild partners, "counsel," associates and paraprofessionals may be assigned to work on this case. It may also be likely that Fox Rothschild's representation of Debtors will require the active participation of attorneys from other departments in the Firm, in addition to the bankruptcy and restructuring lawyers assigned to these Chapter 11 Cases and the corporate and litigation lawyers, as listed above. To the fullest extent possible, lawyers having the requisite expertise who already have knowledge with respect to the areas and/or the matters involved will be assigned. Consistent with the ranges of hourly rates described above, the hourly rates of the other partners, "counsel," associates and paraprofessionals in the Firm that hereafter may act for Debtors may be higher or lower than those of the persons listed above. (Axelrod Verified Statement, ¶30).

33. In addition, Debtors understand that Fox Rothschild, from time to time, utilizes the services of outside attorneys employed on a contract basis. (Bernhart Declaration, ¶45; Axelrod Verified Statement, ¶31). Prior to the Petition Date, Fox Rothschild utilized the services of Nathan A. Schultz of the Law Office of Nathan A. Schultz, P.C. (the "Schultz Firm") in connection with its representation of Debtors. (Axelrod Verified Statement, ¶31). Debtors understand that Fox Rothschild anticipates continuing to utilize the services of the Schultz Firm on the same contract basis in connection with its representation of Debtors in these Chapter 11 Cases. (Bernhart Declaration, ¶45; Axelrod Verified Statement, ¶31). Fox Rothschild bills Debtor for Mr. Schultz's time as legal services, not as an expense, at an hourly rate (\$525) that is commensurate with the rates of Fox Rothschild attorneys of similar seniority and experience. (Axelrod Verified Statement, ¶31).

34. There is no agreement of any nature, other than with respect to the attorneys at Fox

1 Rothschild and payment of any contract attorneys utilized by Fox Rothschild, as to the sharing of
2 compensation to be paid to Fox Rothschild. (Axelrod Verified Statement, ¶32).

3 35. Fox Rothschild will seek compensation for its fees and expenses incurred on behalf
4 of Debtors, consistent with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the United
5 States Trustee Guidelines, and any applicable rules or orders of this Court, from Debtors' estates.
6 (Axelrod Verified Statement, ¶33). Fox Rothschild's hourly rates are set at a level designed to
7 fairly compensate the Firm for the work of its attorneys and paraprofessionals and to cover fixed
8 and routine overhead expenses. Hourly rates vary with the experience and seniority of the
9 individuals assigned and may be adjusted by the Firm from time to time. It is Fox Rothschild's
10 policy to charge, in all areas of practice, for all expenses incurred in connection with a particular
11 representation; including, among other things, photocopying, witness fees, travel expenses, certain
12 secretarial and other overtime expenses, filing and recording fees, long distance telephone calls,
13 postage, express mail and messenger charges, computerized legal research charges and other
14 computer services, expenses for "working meals," and telecopier charges. The Firm will charge
15 Debtors' estates for these expenses in a manner and at rates consistent with charges made generally
16 to its other clients. Fox Rothschild believes that it is more accurate and efficient to charge these
17 expenses to the particular matter involved rather than increasing the hourly rates and spreading the
18 expenses among all clients. (Axelrod Verified Statement, ¶34).

19 **IX.**

20 **NOTICE**

21 36. Notice of this Application has been served on (i) the Office of the United States
22 Trustee; (ii) counsel for Cathay Bank; (iii) Debtors' 20 largest unsecured creditors; (iv) those
23 governmental agencies required to receive notice under Bankruptcy Rule 5003(e); and (v) any
24 parties who have requested notice in these Chapter 11 Cases. Debtors respectfully submit that such
25 notice is appropriate under the circumstances and that no other or further notice is necessary or
26 required.

X.

NO PRIOR APPLICATION

37. No previous application for the relief requested herein has been made to this Court or any other court. (Axelrod Verified Statement, ¶35).

XI.

CONCLUSION

WHEREFORE, Debtors respectfully request entry of an order authorizing the relief requested herein, substantially in the form attached hereto as Exhibit A, and granting Debtors such other and further relief as is just and proper

DATED this 10th day of February 2014.

MARTIFER AURORA SOLAR, LLC, a Nevada
limited liability company

By /s/Klaus Bernhart
Klaus Bernhart, Manager

MARTIFER SOLAR USA, INC., a California
Corporation

By /s/Klaus Bernhart
Klaus Bernhart, Chief Financial Officer

Respectfully submitted by:

FOX ROTHSCHILD LLP

By: /s/Brett A. Axelrod

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*[Proposed] Counsel for Martifer Aurora Solar, LLC
and Martifer Solar USA, Inc.*

**EXHIBIT A
PROPOSED ORDER**

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*[Proposed] Counsel for Martifer Aurora Solar, LLC
and Martifer Solar USA, Inc.*

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

MARTIFER AURORA SOLAR, LLC, a
Nevada limited liability company,

- ☐ Affects Martifer Aurora Solar, LLC
☐ Affects Martifer Solar USA, Inc.
☒ Affects all Debtors

Case Nos. BK-S-14-10355-abl and
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Jointly Administered under
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Chapter 11

**ORDER AUTHORIZING RETENTION
AND EMPLOYMENT OF FOX
ROTHSCHILD LLP AS DEBTORS'
COUNSEL, NUNC PRO TUNC TO THE
PETITION DATE**

Hearing Date: March 10, 2014
Hearing Time: 9:30 a.m.

FOX ROTHSCHILD LLP
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
(702) 262-6899
(702) 597-5503 (fax)

The Court, having reviewed and considered the (i) Application for an Order Authorizing Retention and Employment of Fox Rothschild LLP (“Fox Rothschild”) as Debtor’s Counsel, Nunc Pro Tunc to the Petition Date (the “Application”),¹ filed by Martifer Solar USA, Inc. (“Martifer USA”) and Martifer Aurora Solar, LLC (“Aurora”, and collectively with Martifer USA, the “Debtors”), debtors and debtors in possession in the above-referenced chapter 11 bankruptcy cases (the “Chapter 11 Cases”), (ii) the Verified Statement of Brett A. Axelrod Pursuant to 11 U.S.C. § 329 and Fed. R. Bankr. P. 2014 and 2016 Filed in Support of Application for an Order Authorizing Retention and Employment of Fox Rothschild LLP as Debtor’s Counsel, Nunc Pro Tunc to the Petition Date (the “Axelrod Verified Statement”), (iii) the Omnibus Declaration of Klaus Bernhart Filed in Support of First Day Motions (the “Omnibus Declaration”), and (iv) the Declaration of Klaus Bernhart in Support of Retention of Debtors’ Professionals; and with all other findings set forth in the record at the hearing noted above incorporated herein, pursuant to Fed. R. Bankr. P. 7052; and it appearing that this Court has jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 157 and 1334; it appearing that venue of these Chapter 11 Cases and the Application in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); the Court hereby finds (1) notice of the Application was good and sufficient as provided therein and under the circumstances; (2) Fox Rothschild (a) does not represent any other entity having an interest materially adverse to the interests of the Debtors in connection with these Chapter 11 Cases, (b) is a “disinterested person” within the meaning of 11 U.S.C. § 101(14), and (c) being employed as Debtors’ counsel is necessary and in the best interests of Debtors and their estates; and (3) good cause exists to approve the retention and employment of Fox Rothschild.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Application is GRANTED in all respects.
2. Pursuant to 11 U.S.C. § 327(a), Rules 2014(a), 2016(b) and 5002 of the Federal Rules of Bankruptcy Procedure, and Local Rule 2014, Debtors are authorized to retain and employ

¹ All capitalized terms not otherwise defined herein shall have the same meaning ascribed in the Application.

1 Fox Rothschild as counsel for Debtors *nunc pro tunc* to the Petition Date, to perform the services
2 set forth in the Application and under the terms of the retention agreements attached as Exhibit 1 to
3 the Axelrod Verified Statement.

4 3. Fox Rothschild shall be compensated from the Debtors' estates in accordance with
5 the procedures set forth in the Application, 11 U.S.C. §§ 330 and 331, the Bankruptcy Rules, the
6 Local Rules, guidelines established by the Office of the United States Trustee for the District of
7 Nevada and such other procedures as may be fixed by Orders of this Court.

8 4. Fox Rothschild is disinterested as that term is defined in Bankruptcy Code section
9 101(14), as modified by Bankruptcy Code section 1107(b), and used in Bankruptcy Code section
10 327(a).

11 5. The terms of this Order shall be immediately effective and enforceable upon its
12 entry.

13 Prepared and respectfully submitted by:

14 **FOX ROTHSCHILD LLP**

15 By _____
16 BRETT A. AXELROD, ESQ.
Nevada Bar No. 5859
17 MICAELA RUSTIA MOORE, ESQ.
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18 3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
19 *[Proposed] Counsel for Martifer Aurora Solar, LLC*
20 *and Martifer Solar USA, Inc.*

21 APPROVED/DISAPPROVED:

22 **OFFICE OF THE UNITED STATES TRUSTEE**

23 By _____
24 J. Michal Bloom
Trial Attorney for Tracy Hope Davis,
25 United States Trustee
Foley Federal Building
26 300 Las Vegas Boulevard South, Suite 4300
Las Vegas, Nevada 89101
27
28

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CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- ☐ The Court has waived the requirement of approval in LR 9021(b)(1).
- ☐ No party appeared at the hearing or filed an objection to the motion
- ☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

J. MICHAL BLOOM, OFFICE OF
THE UNITED STATES TRUSTEE

Approved / Disapproved _____

- ☐ I certify that this is a case under Chapter 7 or 13, that I has served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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